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Attorneys for Mr. Aburto

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

(**HONORABLE M. JAMES LORENZ**)

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| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>v.<br>ARTURO ABURTO,<br><br>Defendant. | Criminal No. 08CR2778-L<br><br>DATE: October 15, 2008<br>TIME: 1:30 P.M.<br><br>NOTICE OF MOTIONS AND MOTIONS TO:<br><br>1) COMPEL DISCOVERY; AND<br>2) GRANT LEAVE TO FILE FURTHER MOTIONS |

PLEASE TAKE NOTICE that, on October 15, 2008, at 1:30 p.m., or as soon thereafter as counsel may be heard, defendant, Arturo Aburto, by and through his attorneys, Erick L. Guzman, and Federal Defenders of San Diego, Inc., will ask this Court to enter an order granting the following motions.

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**MOTIONS**

Defendant, Arturo Aburto, by and through his attorneys, Erick L. Guzman, and Federal Defenders of San Diego, Inc., asks this Court, pursuant to the United States Constitution, the Federal Rules of Criminal Procedure, and all other applicable statutes, case law, and local rules, for an order to:

(1) Compel Discovery; and

(2) Grant Leave to File Further Motions.

These motions are based upon the instant motions and notice of motions, the attached statement of facts and memorandum of points and authorities, the files and records in the above-captioned matter, and any and all other materials that may come to this Court's attention prior to or during the hearing of these motions.

Respectfully submitted,

DATED: August 26, 2008

*/s/ Erick L. Guzman*
ERICK L. GUZMAN
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Aburto

ERICK L. GUZMAN
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| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>v.<br>ARTURO ABURTO,<br><br>Defendant. | Criminal No. 08CR2778-L<br><br>DATE: October 15, 2008<br>TIME: 1:30 P.M.<br><br>MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTIONS |

**I.**

**STATEMENT OF FACTS**[1]

On August 20, 2008, Mr. Aburto was indicted on one court of illegal re-entry after deportation per 8 U.S.C. §1326. On August 25, 2008, he appeared before this Court, and received a motion hearing date of October 15, 2008.

These Motions follow.

**II.**

**COMPEL ALL DISCOVERABLE MATERIAL**

Mr. Aburto requests all discoverable material pursuant to Federal Rule of Criminal Procedure 16, Brady v. Maryland, 373 U.S. 83 (1963), Giglio v. United States, 405 U.S. 150 (1972). This includes material that may support any defense pre-trial motions. See United States v. Cedano-Arellano, 332 F.3d 568 (9th

[1] These "facts" are based on discovery provided by the government. Mr. Aburto does not concede the veracity of any of these allegations.

Cir. 2003) (Rule 16 applies to discovery material to defense pre-trial motions); United States v. Gamez-Orduno, 235 F.3d 453, 462 (9th Cir. 2000) (Brady applies to material supporting defense pre-trial motions). Mr. Aburto also requests any evidence that the government may potentially attempt to enter vis-a-vis rule Federal Rule of Evidence 404(b).

Mr. Aburto also requests the court to order access to his "A-File" pursuant to Rule 16(a)(1)(B) of the Federal Rule of Criminal Procedure, which provides that "upon request of the defendant, the government shall furnish to the defendant such copy of his prior criminal record, if any, as is within the possession, custody, or control of the government . . . ."

Mr. Aburto requests all arrest reports, investigator's notes, memos from arresting officers, dispatch tapes, sworn statements, and prosecution reports pertaining to Mr. Aburto and available under Fed. R. Crim. P. 16(a)(1)(B) and (C), Fed. R. Crim. P. 26.2 and 12(I). Mr. Aburto specifically requests that all dispatch tapes or any other audio or visual tape recordings which exist and which relate in any way to his case and or his arrest be preserved and provided in their entirety.

Specifically, Mr. Aburto requests a copy of the audiotape of ***any*** deportation hearing, as well as a transcript of any such proceeding.

## III.

## LEAVE TO FILE FURTHER MOTIONS

Mr. Aburto has not yet received all requested discovery nor viewed his "A-File." After doing so, it is likely that Mr. Aburto will need to file additional motions. Mr. Aburto respectfully requests the court leave to file further motions if necessary.

## IV.

## CONCLUSION

Mr. Aburto requests that the Court to grant the above motions.

Respectfully submitted,

Dated: August 26, 2008

*/s/ Erick L. Guzman*
ERICK L. GUZMAN
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Aburto

**CERTIFICATE OF SERVICE**

Counsel for Defendant certifies that the foregoing pleading is true and accurate to the best of his information and belief, and that a copy of the foregoing document has been served this day upon:

U.S. Attorney CR
Efile.dkt.gc2@usdoj.gov

Respectfully submitted,

DATED: August 26, 2008

/s/ Erick L. Guzman
**ERICK L. GUZMAN**
Federal Defenders of San Diego, Inc.
Attorneys for Arturo Aburto